

INDUSTRIAL ARBITRATION ACT, 1912.

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New South Wales.



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ANNO SECUNDΟ

GEORGII V REGIS.

Act No. 17, 1912,* as amended by the
Act No. 81, 1916,† the Act No.
16, 1918,‡ the Act No. 39, 1918,§
the Act No. 50, 1919,|| and the Act
No. 19, 1920.¶

The Act No. 17, 1912, is also amended by the Act No. 11, 1916
(as amended by Act No. 28, 1920).

n Act to provide for the regulation of the
conditions of industries in certain particulars
by means of industrial conciliation and arbitration,
and for the repression of lock-outs and
strikes; to establish and define the powers,
jurisdiction, and procedure of an industrial
court and certain subsidiary tribunals; to
preserve certain awards and industrial agree-
ments; to repeal the Industrial Disputes Act,
1908; the Industrial Disputes Amendment
Act, 1908, the Industrial Disputes (Amend-
ment) Act, 1909, and the Industrial Disputes
(Amendment) Act, 1910; to amend the
Clerical Workers Act, 1910, and certain other
Acts; and for purposes consequent thereon
or incidental thereto.

A

BE

* Assented to, 15th April, 1912.

† Assented to, 20th December, 1916.

Assented to, 22nd March, 1918.

§ Assented to, 12th December, 1918.

Assented to, 23rd December, 1919.

¶ Assented to, 10th December, 1920.

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Industrial Arbitration.

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

PART I.**PRELIMINARY.**

Short title.

1. This Act may be cited as the "Industrial Arbitration Act, 1912."

Commencement.

2. This Act shall commence on and from a date to be proclaimed by the Governor in the Gazette:

Provided that the provisions of this Act relating to the registration of industrial unions and the appointment of boards, and all provisions necessary for such registration, and for making such appointments, shall come into force on the passing of this Act.

Division of Act.

3. This Act is divided into Parts, as follows:—

PART I.—PRELIMINARY—ss. 1-12.

PART II.—THE INDUSTRIAL COURT AND THE BOARDS—ss. 13-23.

PART III.—JURISDICTION OF BOARDS AND OF THE COURT—ss. 24-30.

PART IV.—PROCEDURE OF BOARDS—ss. 31-37.

PART V.—CONCILIATION COMMITTEES—ss. 38-43.

PART VI.—LOCK-OUTS AND STRIKES—ss. 44-48.

PART VII.—BREACHES OF AWARDS AND OTHER OFFENCES—ss. 49-52.

PART VIII.—GENERAL AND SUPPLEMENTAL—ss. 53-73.

Repeal and savings.

4. (1) The Industrial Disputes Act, 1908, the Industrial Disputes Amendment Act, 1908, the Industrial Disputes (Amendment) Act, 1909, and the Industrial Disputes (Amendment) Act, 1910, are repealed.

Awards.

(2) All awards, orders, and industrial agreements made under authority of the Acts hereby repealed and in force at the commencement of this Act shall, until rescinded

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rescinded under this Act, continue in force for the respective periods fixed by such awards, orders, or industrial agreements, and shall be deemed to have been made under this Act. In construing any such award, order, or industrial agreement references to the registrar shall be read as references to the registrar appointed under this Act, and for the purpose of any appeal from the registrar references to the Industrial Court shall be read as references to the Court of Industrial Arbitration constituted by this Act.

(3) All summonses issued at such commencement under sections forty-one, forty-three, or fifty-five of the Industrial Disputes Act, 1908, and returnable before the Industrial Court, shall continue in force, but shall be returnable before, and shall be heard and determined by, the Court of Industrial Arbitration constituted by this Act, or by the registrar or an industrial magistrate on being referred to him by the court. For the purpose of carrying out the above provisions, the enactments of the Industrial Disputes Act, 1908, shall continue in force and shall, mutatis mutandis, apply to the hearing and determination of any such matter by the Court of Industrial Arbitration constituted by this Act, and to the enforcement of any order of such court.

All documents relating to any such matters or proceedings, and filed or deposited with the Industrial Court, shall be handed over to the Court of Industrial Arbitration, and filed with such court.

(4) The registrar appointed under any Act hereby repealed, and holding office at the commencement of this Act, shall be deemed to have been appointed hereunder.

(5) All regulations made under the Acts hereby repealed, and in force at the commencement of this Act, shall, mutatis mutandis, apply as if made under this Act.

Definitions.

5. In this Act, unless the context otherwise indicates,—

“Apprentice” means an employee under twenty-two years of age who is serving a period of training

Definitions.
Amended,
Act No. 16,
1918, s. 2.

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training under an indenture or other written contract for the purpose of rendering him fit to be a qualified worker in an industry.

“Award” means award under this Act, and includes a variation of such award.

“Board” means industrial board constituted under this Act.

“Boarding-house” shall include a lodging-house, and shall mean a house in which five or more paying boarders or lodgers, not being members of the proprietor’s family, are accommodated.

“Calling” means craft or other occupation.

“Court” means Court of Industrial Arbitration established by this Act.

“Employee” means person employed in any industry, whether on salary or wages or piece-work rates, or as member of a butty gang, but shall not include a member of a family in the employment of a parent, and the fact that a person is working under a contract for labour only, or substantially for labour only, or as lessee of any tools or other implements of production, or any vehicle used in the delivery of goods, shall not in itself prevent such person being held to be an employee.

“Employer” means person, firm, company, or corporation employing persons working in any industry, whether on behalf of himself or itself or any other person or on behalf of the Government of the State, and includes the Crown (except as to any employees employed under the Police Regulation Act, 1899, or any statute passed in substitution for or amendment of the same), the Chief Commissioner for Railways and Tramways, the Sydney Harbour Trust Commissioners, the Metropolitan Board of Water Supply and Sewerage, the Hunter District Water Supply and Sewerage Board, and any council of a municipality or shire, and includes for the purpose of constituting a board, a director, manager, or superintendent of an employer as aforesaid.

“Improver”

Amended,
Act No. 50,
1919, s. 2.

Amended,
Act No. 16,
1918, s. 2.

Amended,
Act No. 50,
1919, s. 2.

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“Improver” means an employee under twenty-two years of age who is serving for the purpose of rendering him fit to be a qualified worker in any industry or special section of an industry.

Amended,
Act No. 16,
1918, s. 2.

“Industrial agreement” means industrial agreement made and filed under any Act hereby repealed, or under this Act.

“Industrial Court” means Industrial Court constituted by the repealed Acts.

“Industrial magistrate” means industrial magistrate appointed under this Act.

“Industrial union” means industrial union registered as an industrial union under this Act.

“Industrial matters” means matters or things affecting or relating to work done or to be done, or the privileges, rights, or duties of employers or employees in any industry, not involving questions which are or may be the subject of proceedings for an indictable offence: and, without limiting the ordinary meaning of the above definition, includes all or any matters relating to—

- (a) the wages, allowances, or remuneration of any persons employed or to be employed in any industry, or the piece-work, contract, or other prices paid or to be paid therein in respect of such employment, and the question whether piece-work or contract work or any other system of payment by results shall be allowed, forbidden, or exclusively prescribed in and for an industry or calling, and whether monetary allowance shall be made by employers in respect of standing back or waiting time;
- (b) the hours of employment, sex, age, qualification, or status of employees, and the mode, terms, and conditions of employment;
- (c) the employment of children or young persons, or of any persons or class of persons in any industry, or the right to dismiss or refuse to employ or reinstate in employment any particular person or class of persons therein; but not

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not so as to give preference of employment to members of industrial unions, except in accordance with the provisions of section twenty-four, subsection one, paragraph (g);

- (d) any established custom or usage of any industry, either general or in any particular locality;
- (e) the interpretation of an industrial agreement or award.

Amended,
Act No. 81,
1916, s. 2.

“ Industry ” means craft, occupation, or calling in which persons of either sex are employed for hire or reward, and unless otherwise indicated by the context or any provisions of this Act any division of an industry or combination, arrangement, or grouping of industries.

“ Judge ” or “ the judge ” means the judge of the Court of Industrial Arbitration, and includes an additional judge of the court.

“ Justice ” means justice of the peace, and includes a magistrate.

“ Lock-out ” (without limiting its ordinary meaning) includes a closing of a place of employment, or a suspension of work, or a refusal by an employer to continue to employ any number of his employees with a view to compel his employees, or to aid another employer in compelling his employees, to accept terms of employment.

“ Magistrate ” means stipendiary or police magistrate.

“ Managerial position ” means the position of an employee who is principally engaged in the direction and control of other employees, but does not include the position of a shopwalker, ganger, or foreman stevedore.

“ Members of a board ” and “ members of a conciliation committee ” include the chairman of the board and of the committee respectively.

“ Metropolitan district court ” means district court of the metropolitan district, holden at Sydney.

“ Minister ” means Minister of the Crown administering this Act.

New
definition,
Act No. 16,
1918, s. 2.
Amended,
Act No. 50,
1919, s. 2.

“ Necessary

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“ Necessary commodity ” includes—

- (a) coal;
- (b) gas for lighting, cooking, or industrial purposes;
- (c) water for domestic purposes; and
- (d) any article of food, the deprivation of which may tend to endanger human life or cause serious bodily injury.

“ Prescribed ” means prescribed by this Act, or by regulations made thereunder.

“ Registrar ” means industrial registrar appointed under this Act.

“ Repealed Acts ” means the Acts repealed by this Act.

“ Schedule ” means Schedule to this Act, and any amendment of or addition to such Schedule made in pursuance of this Act.

“ Strike ” (without limiting its ordinary meaning) includes the cessation of work by any number of employees acting in combination, or a concerted refusal or a refusal under a common understanding by any number of employees to continue to work for an employer with a view to compel their employer, or to aid other employees in compelling their employer, to accept terms of employment, or with a view to enforce compliance with demands made by them or other employees on employers.

“ Trade union ” means trade union registered under the Trade Union Act, 1881, and includes a branch so registered.

Industrial unions.

6. The registrar may, on application made as herein-after provided, register under this Act as an industrial union of employers any person or association of persons, or any incorporated company, or association of incorporated companies, who or which has in the aggregate throughout the six months next preceding the date of the application for registration employed on an average, taken per month, not less than fifty employees.

Registration
of industrial
union of
employers.

Such

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Such application shall be made as prescribed, and, if made by an association or company, shall be signed by a majority in number of the governing body thereof.

Registration under repealed Acts and Act of 1901.

7. Any person or body whose registration under the Act No. 59, 1901, as an industrial union is at the commencement of this Act in force, and any trade union registered under section nine of the Industrial Disputes Act, 1908, whose registration under that Act is at the said commencement in force, shall, unless and until such registration is cancelled, be deemed to be an industrial union.

Registration of industrial union of employees.

8. (1) The registrar may, on application made as hereinafter provided, register under this Act any trade union of employees. On such registration the trade union shall be an industrial union until such registration is duly cancelled.

(2) Such application shall be made in writing as prescribed by the committee of management of the trade union, and shall be signed by a majority in number of the members of such committee. Notice of any such application shall be published as prescribed.

The registrar may require such proof as he thinks necessary of the authority of the said members to make the said application.

Amended, Act No. 16, 1918, s. 3 (1).

(3) Any such application may be refused by the registrar if he is of opinion that the organization applying is not a bone-fide trade union, or if registered under this Act would not be a bona-fide industrial union, or to the extent to which in his opinion the interests under this Act of persons represented by the applicant union may be protected by a previously registered industrial union which has not since the passing of the Industrial Arbitration (Amendment) Act, 1918, taken part in, aided, or abetted an illegal strike:

Proviso added, Act No. 50, 1919, s. 3.

Provided that any application for registration as an industrial union, made by a trade union, all of whose members are employees of the Crown, shall not be refused upon the ground only that the interests of the employees represented by the applicant union may be protected by a previously registered industrial union.

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(4) The registrar shall fix a day for considering any objections on the above ground to the granting of the application, and shall notify the same as prescribed.

(5) No branch shall be registered, unless it is a bona-fide branch of sufficient importance to be registered separately.

(5A) When any trade union registered as an industrial union has changed its name, or when two or more trade unions, all of which are registered as industrial unions, have amalgamated, the registrar may, upon application in the prescribed manner by any industrial union or industrial unions, and upon the production of the prescribed particulars, record any such change of name or amalgamation in the register of industrial unions. Any such record shall be deemed to be a re-registration of the applicant union or unions in such changed name or as so amalgamated as the case may be: Provided that any such change of name or amalgamation shall not affect any rights or liabilities of any such union or unions: Provided also that the registrar may at his discretion, upon any such application, require the applicant union or unions to follow the procedure hereinbefore set out in respect of applications for the registration of industrial unions.

Change of name or amalgamation of unions.
New subsection inserted by the Act No. 39, 1918, s. 2.

(6) Any decision of the registrar under this section in respect of an objection taken as aforesaid, or on refusal of registration, shall be subject to appeal to the court as prescribed.

(7) The court may for any reasons which appear to it to be good cancel the registration of any industrial union, provided that, save where otherwise mentioned in this Act, such cancellation shall not relieve the industrial union or any member thereof from the obligation of any award or industrial agreement, or order of the court or a board, or from any penalty or liability incurred prior to such cancellation.

9. (1) The court may cancel the registration of any industrial union if proof is given to its satisfaction that a majority in number of the members of the union, by secret ballot taken as prescribed, require such cancellation.

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(2) Provided that such power of cancellation shall not be exercised while any award or any industrial agreement relating to members of any such union whether made under the repealed Acts or this Act is in force.

The court
may cancel
registration.

Amended,
Act No. 16,
1918, s. 3 (3).

10. The court may, if satisfied that an industrial union is instigating to or aiding any other union or any of its members in a lock-out or strike for which such other union or any of its members are liable to a penalty under this Act, in its discretion cancel such registration and cancel any award or industrial agreement relating to such industrial union or the members thereof.

Industrial agreements.

Power to
make
industrial
agreements.

11. Any industrial union of employees may make an agreement in writing with an employer or any other industrial union relating to any industrial matter.

Any such agreement if made for a term specified therein not exceeding five years from the making thereof, and if filed at the office of the registrar, shall be an industrial agreement within the meaning of this Act, and shall be binding on the parties, and on all persons for the time being members of such unions, but may be rescinded or varied in writing by the parties. Any variation of any such agreement, if filed as aforesaid, shall be binding as part of the agreement.

Any such industrial agreement may be enforced under this Act.

Industrial
agreements
filed in office
of registrar.

12. If after the commencement of this Act any trade union of employees, not being an industrial union, enters into and executes in the manner prescribed by the rules of such union any agreement relating to any industrial matters with an employer or an industrial union of employers, either party to such agreement may file the same in the office of the registrar. Any such agreement, if made for a term specified therein not exceeding five years from the making thereof, shall, in so far as it relates to industrial matters, be binding on the parties, and on all persons for the time being members of such unions, and

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and shall be enforceable in the same manner as an industrial agreement made under this Act. Such agreements may be rescinded or varied by the parties, and any such variation if filed as aforesaid shall be binding as part of the agreement.

12B. Whenever a declaration as to the living wage shall be made under section seventy-nine of this Act during the currency of any industrial agreement, the court may, upon the application of any party to the industrial agreement, vary the wage provisions contained in such agreement.

12c. An industrial agreement shall continue in force after the expiration of the term specified therein until varied or rescinded by the parties or by the court or until notice of termination shall have been given in writing by a party thereto to the other party or parties and to the registrar.

Court may vary wage provisions of industrial agreement.
New section, Act No. 50, 1919, s. 4.

Continuance in force of industrial agreement after expiry.
New section, Ibid.

PART II.

THE INDUSTRIAL COURT AND THE BOARDS.

Constitution of the court.

13. (1) There is hereby constituted a court to be called the Court of Industrial Arbitration. It shall be a superior court and a court of record, and shall have a seal, which shall be judicially noticed.

The Court shall have the jurisdiction and powers conferred on it by this Act, and also the jurisdiction and powers conferred in the Industrial Court by the Clerical Workers Act, 1910. Subject to the said Act, with regard to jurisdiction, the provisions of this Act shall apply so far as they are applicable for the purpose of making and enforcing awards under the said Act.

(2) The Industrial Court established by the repealed Acts is dissolved, and the present judge of that court shall be the judge of the Court of Industrial Arbitration, and shall hold such office subject to the provisions of subsections six and seven of this section.

Whenever

The judge of the court.

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Whenever the office of the judge becomes vacant, the Governor may appoint a Supreme Court judge, or a District Court judge, or a barrister-at-law of five years' standing, to be the judge.

(3) The Governor may appoint persons qualified for appointment as judges of the court or as District Court judges to be additional judges of the court: Provided that the additional judges of the court shall not at any time exceed three in number. Any additional judge so appointed shall, except as hereinafter provided, have the same rights, powers, jurisdiction, and privileges as the judge of the court.

(4) The Governor may, upon a report by the court that a judge is prevented by any cause from attending to his duties as judge, or that the judge or judges of the court is or are unable to cope promptly and expeditiously with the matters in the court's lists or with the demand for judicial services made upon the court, or is or are from considerations of natural justice averse to adjudicating upon any specific matter, appoint a deputy judge or deputy judges to act temporarily as a judge or judges of the court from amongst persons qualified to be judges of the court, and such person or persons shall while so acting have all the jurisdiction and powers of a judge of the court.

(5) The court shall be constituted by the judge or an additional or deputy judge, or where and as prescribed any two or more of them together. There may be two or more sittings of the court held at the same time.

(6) The present or any future or additional judge of the court shall be liable to be removed from office in the same manner and upon such grounds only as a Supreme Court judge is by law liable to be removed from office.

(7) (a) The Governor may from time to time from among persons qualified to be judges appoint judges of the court in succession to the senior judge holding office at the commencement of the Industrial Arbitration (Amendment) Act, 1916.

(b) Any judge so appointed in succession to the said senior judge shall, if a Supreme Court judge, have

Additional judge.

Substituted subsection, Act No. 81, 1916, s. 3 (a).

Deputy judge.

Substituted subsection, Ibid. s. 3 (b).

Judge to constitute the court. Substituted subsection, Ibid. s. 3 (c).

Tenure of office of judge.

Salary. Substituted subsection, Ibid. s. 3 (d).

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have the same rank, title, status, and precedence, and the same salary and rights as judges of the Supreme Court, or if a district court judge or barrister-at-law, the status, salary, and rights of such senior judge prior to the passing of the Industrial Arbitration (Amendment) Act, 1916. The additional judges other than the first additional judge holding office at the commencement of the Industrial Arbitration (Amendment) Act, 1916, shall, except as hereinafter provided, have the same rank, title, status, and precedence and the same salary and rights as judges of district courts. Such rights and precedence shall count from the date of appointment unless in the case of a senior judge he is already a Supreme Court judge, or in the case of an additional judge he is already a district court judge, when they shall count from the date of appointment as Supreme Court or district court judge as the case may be.

(c) The said senior judge and first additional judge holding office at the commencement of the Industrial Arbitration (Amendment) Act, 1916, shall have the same status, salary, and rights as if the said Act had not passed.

13A. The court may elect to sit with assessors representing the interests of each of the parties before it. Such assessors shall be appointed by the court from persons nominated as prescribed.

The court may commit to such assessors sitting without a judge for determination or for consideration and report any issue of fact or the items of any log of prices or other basis for the payment of work by results or any other matter prescribed.

13B. The court shall when sitting for the hearing and determination of applications, references, and other matters exclusively affecting the Crown as employer or affecting persons exclusively employed in any industry by the Crown or by any Minister, trust, commission, or board exercising executive or administrative functions on behalf of the Government, including the Railway Commissioners for New South Wales, Metropolitan Meat Industry Board, Sydney Harbour Trust Commissioners, Board of Water Supply and Sewerage, Water Conservation

Court may sit with assessors.

New section, Act No. 16, 1918, s. 4.

Special court for Crown matters.

New section, Ibid.

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Conservation and Irrigation Commission, the Board of Fire Commissioners of New South Wales, and the Hunter District Board of Water Supply and Sewerage, or by the employees of any city, shire, or municipal council, sit as a special court with assessors appointed as prescribed in the last preceding section.

Special court :
coal mining.

New section,
Act No. 16,
1918, s. 4.

Amended,
Act No. 39,
1918, s. 3.

Deputy
court.

New section,
Act No. 16,
1918, s. 4.

Appeal from
single judge.

New section,
Ibid.

Application of
certain sections
to assessors.

New section,
Ibid.

Powers of the
court.

New subsec-
tion,
Act No. 81,
1916, s. 4.

13c. The court shall, when sitting for the hearing and determination of applications, references, and other matter affecting employers and employees in the coal-mining industry, sit as a special court with or without assessors appointed in the same manner as prescribed in section 13A of this Act.

13d. The Governor may, from time to time, proclaim districts of the State in and in respect of which the powers and jurisdiction of the court may, subject to general or special orders of the court made in that regard, be exercised by a deputy court to be constituted by a judge or a chairman nominated by the court and appointed by the Governor with or without assessors appointed in the same manner as is prescribed in section 13A of this Act.

13e. The senior judge may grant to any party affected by an award of the court made by a single judge (with or without assessors) the right to appeal against such award to the court to be constituted by three judges, and the court, on the hearing of such appeal, may vary any such award as it thinks fit.

13f. The provisions of sections nineteen, twenty-two, and twenty-three of the Principal Act shall apply, mutatis mutandis, to assessors of the court and of a deputy court.

14. (1) The court, in addition to the jurisdiction and powers conferred on it by this Act, shall have the powers and may exercise the jurisdiction hereby conferred on industrial boards and on the chairmen thereof and on the chairmen of conciliation committees, and on the industrial registrar and an industrial magistrate.

(2) The court may exercise the powers, jurisdictions, and functions of an industrial board or of a special board for demarcation purposes in respect of any industry or industries, notwithstanding that a board or boards may not have been constituted for such industry or industries.

(3)

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(3) Upon any reference or application to a board under the provisions of section thirty-one of this Act the jurisdiction and functions of such board thereupon may be exercised by the court, and shall not be exercised by the board until a direction to that effect shall be given by the court.

(4) The judge may, if he thinks fit, assume the powers, functions, and jurisdiction of the chairman of any board which may be directed to operate.

(5) The court may, on the application of the Minister, or an employer, or an industrial union, determine any question as to the demarcation of the industrial interests of trade unions and industrial unions, and may also codify into one award, subject to such amendments as it may deem expedient to make, all awards binding or affecting any employer or class or section of employers in any industry or group of industries or the members of an industrial union employed by the same employer or class or section of employers.

Constitution of the boards.

15. All the boards appointed under the repealed Acts are at the commencement of this Act dissolved, except where at such commencement any part-heard matter is before any such board, in which case such board may continue to act and deal with and determine such matter in the same manner as if this Act had not passed. On such matter being determined, the board shall be dissolved on proclamation to that effect, made by the Governor in the Gazette.

16. (1) Industrial boards shall, on the recommendation of the court, be constituted by the Minister for any industry or division of any industry, or any combination, arrangement, or grouping of industries, as the Minister on the recommendation of the court may direct.

(2) The Minister shall appoint a chairman who shall be recommended by the court for any one or more of the boards which may be recommended for constitution. Such chairman shall preside over and be a member of all such boards.

Industrial Arbitration.

Appointment of other members.

Amended, Act No. 81, 1916, s. 5 (c).

(3) The Minister shall appoint the other members of such boards who shall be recommended by the court from persons nominated as prescribed by the employers and by the industrial unions of employees concerned respectively, or where either employers or employees fail to so nominate from persons nominated by the Minister.

Board constituted.

(4) On the chairman and members being appointed a board shall be deemed to be constituted.

Members.

(5) Each such board shall, besides its chairman, consist of two or four other members, as may be recommended by the court. One-half in number of such other members shall be employers, and the other half employees, each of whom has been or is actually and bona fide engaged in one of the industries or callings so specified: Provided that where the employers or the employees in the industries or callings consist largely of females, members may be appointed who are not engaged in the industries or callings: Provided also that where, in the opinion of the court, no suitable employer or no suitable employee in the industry can be found who is willing to act on the board on behalf of the employers or employees, as the case may be, such court may recommend any person whom it considers to be acquainted with the working of the industry to represent the employers or employees on the board, and the Minister shall appoint such person.

Demarcation of callings.

(6) Where it appears to the court that a question has arisen as to the right of employees in specified callings to do certain work in an industry to the exclusion of the employees in other callings, the court may, on application made by any such employees, constitute a special board to determine such question.

Such board shall consist of a chairman and such number of other members as the court fixes, but so that—

(a) one-half in number of such other members shall be employers and the other half employees, each of whom has been or is actually and bona fide engaged in one of the said callings;

(b)

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(b) such of the callings as the court considers to be directly interested in the question shall be represented on the board by an employer or employers, and by an employee or an equal number of employees.

The chairman and other members of any such board shall be appointed by the court.

The determination shall have effect as an award of a board.

17.

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Section 17
repealed,
Act No. 81,
1916, s. 6.

18. If any member of a board, without reasonable excuse, neglects on two successive occasions to attend meetings of the board duly convened, or to vote when present at any such meeting on any question duly submitted to the board, he shall be liable to a penalty not exceeding five pounds, and the Governor may declare his office vacant, and thereupon such member shall cease to hold office.

19. Each member of a board shall, upon his appointment, take an oath not to disclose any matter or evidence before the board or the court relating to—

trade secrets;

the profits or losses or the receipts and outgoings of any employer;

the books of an employer or witness produced before the board or the court; or

the financial position of any employer or of any witness;

and if he violates his oath, he shall be liable to a penalty not exceeding five hundred pounds, and, on conviction of such offence, he shall cease to hold office.

20. (1) The Minister, on the recommendation of the court, may at any time dissolve a board; he may also on such recommendation remove any member of a board from his office on the ground that such member is of unsound mind, or in prison, or has abandoned his residence in this State, or is not properly discharging his duties as a member of such board.

Dissolution of
board and
removal of
member.

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Period of office.

(2) Subject to the above provision, the members of a board shall hold office until the expiration of three years from the date of their appointment, and then shall cease to hold office: Provided that a member may resign his office.

New board.

(3) A new board may be appointed under this Act to take the place of a board that has been dissolved, or the members of which have resigned, or have ceased to hold office.

Members ceasing to hold office on a board shall be eligible for appointment to the new board.

The provisions of this Act relating to the constitution and manner of appointment of boards shall apply to the appointment of such new board.

Appointment to vacancies.

21. (1) Where, from any cause, a member of a board ceases to hold office, the Minister may appoint a duly qualified person, who shall be recommended by the court, to his office for the residue of the period for which such member was appointed.

(2) Where a person is appointed to any vacancy on a board, the board as newly constituted may, if no member of the board objects, continue the hearing of and may determine any part-heard case.

Gazette of appointments.

22. Every appointment of a member of a board shall be published in the Gazette, and a copy of a Gazette containing a notice of such appointment purporting to have been published in pursuance of this Act shall be conclusive evidence that the person named in such notice was legally appointed to the office named, and had power and jurisdiction to act in such office, and such appointment shall not be challenged for any cause.

Fees.

23. The members of a board shall be paid such fees as may be fixed by the Governor.

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PART III.

JURISDICTION OF BOARDS AND OF THE COURT.

24. (1) A board, on any reference or application to it, may, with respect to the industries or callings for which it has been constituted, make an award—

Power of board to make recommendation.

(a) fixing the lowest prices for work done by employees, and the lowest rates of wages payable to employees, other than aged, infirm, or slow workers:

Amended, Act No. 16, 1918, s. 5, and Act No. 39, 1918, s. 4.

Provided that no award shall be made for the payment of wages or remuneration of persons occupying managerial positions except by the special court for Crown matters exercising jurisdiction under section 13B of this Act or of any wages or remuneration in excess of ten pounds per week, or (where salaries are paid on an annual basis) any salary in excess of five hundred and twenty-five pounds per annum;

Amended, Act No. 50, 1919, s. 5 (1).

(b) fixing the number of hours and the times to be worked in order to entitle employees to the wages so fixed:

Provided that after the first day of October, one thousand nine hundred and twenty-one, the hours for cessation of employment of persons employed in shops coming under the provisions of the Early Closing Act, 1899, and the Acts amending the same, shall be the hours fixed by such Acts for the closing of such shops;

Amended, Act No. 19, 1920, s. 2.

(c) fixing the lowest rates for overtime and holidays and other special work, including allowances as compensation for overtime, holidays, or other special work;

(d) fixing the number or proportionate number of apprentices and improvers and the lowest prices and rates payable to them;

(e) determining any industrial matter;

(f) rescinding or varying any award made in respect of any of the industries or callings for which it has been constituted;

(g)

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New paragraph, Act No. 39, 1918, s. 4.

(g) declaring that preference of employment shall be given to the members of any trade union or industrial union of employees upon such terms and conditions as the court may prescribe so long as the members thereof shall not after the passing of the Industrial Arbitration (Amendment) Act, 1918, have taken part in, aided, or abetted any illegal strike: Provided that where any declaration giving such preference of employment has been made in favour of an industrial or trade union of employees, such declaration shall be cancelled by the Court of Arbitration if at any time such union, or any substantial number of its members, takes part in a strike or instigates or aids any other persons in a strike; and if any lesser number takes part in a strike, or instigates or aids any other persons in a strike, such court may suspend such declaration for such period as to it may seem just;

(h) declaring what deduction may be made from the wages of employees for board or residence or board and residence, and for any customary privileges or payments in kind conceded to such employees:

Proviso added, Act No. 50, 1919, s. 5 (iii). Provided that an award affecting employees employed under the Public Service Act, 1902, or any Act amending the same shall, so far as such employees are concerned, be made only for the purposes specified in paragraphs (a), (c), (f), and (h):

Provided also that nothing contained in this Act shall in any way alter any provisions of the Public Service Acts or of any regulations thereunder—

(a) prescribing or authorising the Public Service Board to prescribe the passing of an examination or other test as a necessary condition for promotion of an officer or employee to a higher class, grade, or division; or

(b) providing that payment of increments of salary to an officer shall be subject to the giving of a certificate by the said board that the conduct of the officer and his discharge of his duties warrant

an

Industrial Arbitration.

an increase of his salary. In the event of the said board refusing to give such certificate, the officer shall be supplied with a written statement showing the reason why such certificate was refused.

(2) Where an institution carried on wholly or partly for charitable purposes provides for the food, clothing, lodging, or maintenance of any of its employees or any of its inmates who are deemed to be employees, the board in its award as to the wages of such employees or inmates, shall make due allowance therefor. The board may exempt such institution from all or any terms of the award, where the food, clothing, lodging, and maintenance provided by the institution, together with the money (if any) paid by the institution to such employees or inmates as wages, are at least equal in value to the value of the labour of such employees or inmates.

24A. (1) The court or a board may in prescribing minimum wages fix the quantity of work or services to be done.

Court or
board may fix
quantity of
work to be
done.

(2) Whenever an award relating to any skilled occupation fixes minimum wages higher than the living wage, the amount of the excess of such minimum wages above the living wage shall be the same in the case of males and females doing the same class of work.

New section,
Act No. 16,
1918, s. 6.

(3) The court or a board shall, as far as is consistent with the maintenance of industrial peace, deal only with wages and hours of employment, leaving all other matters to shop committees, conciliation committees, industrial councils, or voluntary committees formed for the purpose of adjusting the industrial relationship of employer and employee. A judge or deputy judge of the court may act as the chairman of any industrial council.

24B. All employees engaged in rural industries shall be entitled to be paid the living wages declared in their regard by the Board of Trade, but, with the exception of employees whose conditions of employment have been regulated by any award, shall not be otherwise subject to the provisions of this Act.

Employees
in rural
industries.

New section,
Ibid.

*Industrial Arbitration.*Award of
board.Amended,
Act No. 16,
1918, s. 7.Proviso
added,
Act No. 50,
1919, s. 6.

25. (1) The award of a board shall be signed by the chairman and forwarded to the registrar, who shall forthwith publish the same in the Gazette and notify the parties. Fourteen days after such publication every award shall take effect, and be binding on all persons engaged in the industries or callings, and within the locality and for the period not exceeding three years specified therein, and after such period until varied or rescinded by the board:

Provided that the court may, in its discretion, order and determine—

- (a) that any award made in respect of persons employed under the Public Service Acts who have not prior to the making thereof been bound by an award shall take effect from such day whether before or after the commencement of the Industrial Arbitration (Amendment) Act, 1919, as the court may direct; and
- (b) that in all other cases an award shall take effect from such day subsequent to the lodging or filing of the application therefor as the court may direct.

Provided further—

- (a) that the court may in exercising its powers under the last preceding proviso attach such terms, conditions, or restrictions as may appear to it to be just; and
- (b) that no employer shall be bound to pay any wages fixed by an award made by the court in exercise of such powers until fourteen days after publication of the award as aforesaid, but the first payment of wages under any such award shall include all arrears which have accrued due from the date upon which the award is directed to take effect.

(2) Within thirty days of such publication any of the parties to the proceedings before the board, with the consent of the court, and any other person, with the like consent, may in manner prescribed make application to the court for variation or amendment of such award, or for rehearing in respect to any matter in or omission from the award.

(3)

Applications
to court to
vary recom-
mendations.

Industrial Arbitration.

(3) If the board refuses to make any award, any of the said parties may, within fourteen days after such refusal, make application to the court to make an award as to any matter included in a claim or reference made to the board.

(4) On any such application the court may ^{Determination by court.} confirm, or vary, or rescind the award thus appealed from, or may make a new award, and may make such order as to the costs of the appeal as it thinks just.

At such hearing the members of the board other than the chairman shall, if any person making the application so desires, sit with the court as assessors.

(5) The pendency of an appeal shall not suspend the operation of an award appealed from.

26. The court or an industrial board shall not fix ^{Wages of Government employees.} rates of wages for persons employed by the Crown, the Railway Commissioners for New South Wales, the ^{Substituted section, Act No. 16, 1918, s. 8.} Sydney Harbour Trust Commissioners, the Board of Water Supply and Sewerage, the Water Conservation and Irrigation Commission, the Board of Fire Commissioners of New South Wales, the Metropolitan Meat Industry Board, and the Hunter District Board of Water Supply and Sewerage, less than those paid to other employees not employed by the Government or its departments doing substantially the same class of work, but the fact that employment is permanent or that additional privileges are allowed in the service of the Government or its departments shall not of itself be regarded as a substantial difference in the nature of the work.

27. (1) Any aged, infirm, or slow worker who may deem himself unable to earn the minimum wage prescribed by any award, may apply to the registrar for a permit in writing to work for less than the wage so prescribed.

(2) The registrar shall be the tribunal to determine whether and on what conditions such permit shall be granted, and shall have power to revoke or cancel any permit.

(3) The registrar shall forthwith notify the secretary of the industrial union of the trade or calling in which such applicant desires to be employed of the grant of such permit and of the conditions contained therein.

(4)

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(4) The said union may at any time after such notice apply to the registrar in the manner prescribed for the cancellation of such permit.

(5) An appeal against any such determination shall not lie from the registrar to the court except on the ground that the trade or calling concerned is one in which no such permit should be granted.

(6) Any such permit for a period not exceeding three months may be issued by any inspector or other person appointed by the Minister.

28. (1) Unless otherwise expressly provided in this Act, an award, whether made under this Act or the repealed Acts, may be rescinded, added to, or varied only on application or reference to a board in pursuance of this Act.

But the court may, at any time, on its own initiative or on application made to it, prohibit any proceeding of a board or vary or rescind any award made under this Act or the repealed Acts.

(2) Whenever a declaration as to the living wage shall be made under section seventy-nine of this Act during the currency of any award, any party to the award may apply to the court to vary the wage provisions contained in the award.

29. Subject to the right of appeal under this Act, and to such conditions and exemptions as the board may, and is, hereby authorised to determine and direct, an award shall be binding on all persons engaged in the industries or callings and within the locality, and for the period not greater than three years specified therein, and after such period until varied or rescinded by the board.

Intervention by Crown.

Intervention by Crown.

30. The Crown may, where, in the opinion of the Minister, the public interests are or would be likely to be affected, intervene in any proceedings under this Part before a board or the court, or appeal from an award of a board and make such representations as it thinks necessary in order to safeguard the public interests.

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PART IV.

PROCEDURE OF BOARDS.

31. (1) Proceedings before a board shall be commenced by—

- (a) reference to the board by the court or the Minister; or
- (b) application to the board by employers or employees in the industries or callings for which the board has been constituted.

(2) Any such application shall be in the form, and shall contain the particulars prescribed, and shall be signed by—

- (a) an employer or employers of not less than twenty employees in any such industry or calling; or
- (b) an industrial union whose members are employers or whose members are employees in any such industry or calling.

(3) All meetings of a board shall be convened by the chairman by notice to each member served as prescribed.

32. In every case where an application or reference to a board is made, it shall be the duty of the chairman to endeavour to bring the parties to an agreement with respect to the matters referred to in such application or reference, and to this end the board shall, in such manner as it thinks fit, expeditiously and carefully inquire into such matters and anything affecting the merits thereof.

In the course of such inquiry, the chairman may make all such suggestions and do all such things as he deems right and proper for inducing the parties to come to a fair and amicable settlement of such matters.

33. A board, or any two or more members thereof authorised by the board under the hand of its chairman, may enter and inspect any premises used in any industry to which a reference or application to the board relates, and any work being carried on there.

If any person hinders or obstructs a board or any member thereof in the exercise of the powers conferred by this section, or hinders or obstructs the judge in the exercise of like powers, he shall be liable to a penalty not exceeding ten pounds.

34.

Commencement of proceedings.

Convening of meetings.

Inquiry by board.

Power of entry and inspection.

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Conduct of proceedings of board, and its power as to witnesses.

34. A board may—

- (a) conduct its proceedings in public or private as it may think fit;
- (b) adjourn the proceedings to any time or place;
- (c) exercise in respect of witnesses and documents and persons summoned or giving evidence before it, or on affidavit, the same powers as are by section one hundred and thirty-six of the Parliamentary Electorates and Elections Act, 1902, conferred on a committee of elections and qualifications, and the provisions of the said section shall apply in respect of the proceedings of the board: Provided that unless a person raises the objection that the profits of an industry are not sufficient to enable him to pay the wages or grant the conditions claimed, no person shall be required without his consent to produce his books, or to give evidence with regard to the trade secrets, profits, losses, receipts, and outgoings of his business, or his financial position.

Where a person raises such objection he may be required, on the order of the chairman, to produce the books used in connection with the carrying on of the industry in respect of which the claim is made, and to give evidence with regard to the profits, losses, receipts, and outgoings in connection with such industry, but he shall not be required to give evidence regarding any trade secret, or, saving as hereinbefore provided, his financial position. No such evidence shall be given without his consent except in the presence of the members of the board alone, and no person shall inspect such books except the chairman or an accountant appointed by the board, who may report to the board whether or not his examination of such books supports the evidence so given, but shall not otherwise disclose the contents of such books. Such accountant shall, before acting under this paragraph, take the oath prescribed in respect of members of a board by section nineteen of this Act;

(d)

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(d) admit and call for such evidence as in good conscience it thinks to be the best available, whether strictly legal evidence or not.

35. (1) The chairman shall require any person, Evidence to be on oath. including a member of the board, to give his evidence on oath, and may on behalf of the board issue any summons requiring the attendance of witnesses; if any person so summoned does not attend he shall be liable to a penalty not exceeding fifty pounds.

(2) Any question as to the admissibility of Admissibility of evidence. evidence shall be decided by the chairman alone, and his decision shall be final.

(3) Where during the hearing of any matter Questions of jurisdiction. before a board its jurisdiction is disputed, the chairman may decide the question of jurisdiction subject to appeal to the court, or may submit it to the court; in which case the court shall decide such question and remit its decision to the board.

36. At any meeting of a board, unless otherwise Proceedings at meetings. provided in this Act,—

- (a) the chairman shall preside;
- (b) each member except the chairman shall have one vote; and where the votes for and against any matter are equal, the chairman shall decide the question, but shall not give such decision unless satisfied that the question cannot otherwise be determined;
- (c) any member of the board may call, examine, or cross-examine witnesses.

37. In any proceedings before the court or a board, Appearance of parties by advocate or agent. no person, except with the consent of the court or the chairman, shall appear as an advocate or agent who is not or has not been actually and bona fide engaged in one of the industries or callings in respect of which such proceedings are taken.

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Amended,
Act No. 16,
1918, s. 11.

Notification
of districts.
Ibid.

Conciliation
committees.
Ibid.

Repealed,
Ibid.

Inquiry by
committee.
Amended,
Ibid.

PART V.

CONCILIATION COMMITTEES.

Committees for industrial districts.

38. The Minister may, as prescribed, notify districts as follows:—

- A northern industrial district.
- A southern industrial district.
- A western industrial district.

He may also notify, as he may think fit, any other district in which more than five hundred employees work in or about coal or metalliferous mines, and may cancel or amend any notification made under this section.

39. (1) The Minister may, in the manner prescribed, constitute for each such district a conciliation committee consisting of two or four members, as the Minister may determine, and to be appointed by him, one-half in number of whom shall be nominated by the employers and the other half nominated by the employees, and a chairman.

The chairman shall be chosen by the unanimous agreement of the other members, but if no such agreement is arrived at, or if the chairman so chosen is unable or refuses to act, he shall be appointed by the Governor: Provided that the Minister may, if he thinks fit, appoint the judge to be chairman of any such committee.

(2) * * * *

(3) Such of the provisions of sections nineteen to twenty-three as relate to members of boards shall, so far as applicable, and subject to the provisions of this section, apply to any member of a committee established under this section except the judge.

40. (1) Any such committee shall meet on being summoned by its chairman, as prescribed, or at the request of the Minister, and shall inquire into any industrial matter within its district.

(2) The chairman shall preside at all meetings of a committee, and shall endeavour to induce the other members to come to an agreement, but shall not take any part in the decisions of the committee.

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41. If such agreement is come to, it shall be reduced to writing and signed by the other members on behalf of the employers and the industrial unions concerned. Such agreement on being certified by the chairman as prescribed shall be filed and shall have effect as an industrial agreement between such employers and unions.

42. The Minister may also, as prescribed, constitute a conciliation committee for any occupation or calling in which more than one hundred persons are employed other than coal or metalliferous mining. Such committee shall be appointed in the manner and shall have the powers mentioned in sections thirty-nine, forty, and forty-one of this Act.

Special commissioner.

43. (1) There shall be a special commissioner, who shall be appointed in that behalf by the Minister.

(2) Such commissioner may require the attendance of any persons to meet in conference whenever any question has arisen that in his opinion might lead to a lock-out or strike or where a strike has occurred. At such conference the commissioner shall preside and endeavour to induce the parties to come to an agreement.

(3) If any person so required does not attend in conference as aforesaid he shall be liable to a penalty not exceeding fifty pounds.

Agreement to have effect as industrial agreement.

Constitution of conciliation committee.

Amended, Act No. 16, 1918, s. 12.

Conference.

Amended, Ibid. s. 13.

PART VI.**LOCK-OUTS AND STRIKES.***Lock-outs.*

44. If any person, including an industrial union of employers, does any act or thing in the nature of a lock-out, or takes part in a lock-out, or instigates to or aids in any of the abovementioned acts, unless the employees working in the industry concerned are taking part in an illegal strike, the court may order him to pay a penalty not exceeding one thousand pounds.

Penalty for lock-out.

Amended, Ibid. s. 14.

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Illegal
strikes.
Substituted
section,
Act No. 16,
1918, s. 15.

45. The following strikes and no others shall be illegal:—

- (a) Any strike by employees of the Crown or of any Minister, trust, commission, or board exercising executive or administrative functions on behalf of the Government of the State (including the Railway Commissioners for New South Wales, the Sydney Harbour Trust, the Board of Water Supply and Sewerage, the Water Conservation and Irrigation Commission, the Board of Fire Commissioners of New South Wales, the Metropolitan Meat Industry Board, the Hunter District Board of Water Supply and Sewerage) or by the employees of any city, shire, or municipal council or of a statutory board or committee representing the interests in any combination of shires or municipalities, or by employees engaged in any contracts for military or naval purposes.
- (b) Any strike by the employees in an industry, the conditions of which are for the time being wholly or partially regulated by an award or by an industrial agreement: Provided that any union of employees may render an award which has been in operation for a period of at least twelve months no longer binding on its members by the vote of a majority of its members at a secret ballot taken in accordance with the provisions for ballots contained in this Act and the regulations thereunder in which not less than two-thirds of the members of such union take part.
- (c) Any strike which has been commenced prior to the expiry of fourteen clear days' notice in writing of intention to commence the same, or of the existence of such conditions as would be likely to lead to the same given to the Minister by or on behalf of the persons taking part in such strike.

Penalty for
illegal strike.
Substituted
section,
Ibid.

46. In the event of an illegal strike occurring in any industry, the court may order any trade union whose executive or members are taking part in or aiding or abetting the strike, to pay a penalty not exceeding five hundred pounds.

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47. It shall be a defence in any proceedings for an order or direction under the last preceding section that the union by the enforcement of its rules and by other means reasonable under the circumstances endeavoured to prevent its members from taking part in or aiding or abetting or continuing to take part in, aid or abet the illegal strike.

48. (1) The Minister may at any time or from time to time during the progress of any strike, or whenever he has reason to believe that a strike is contemplated by the members of any industrial or trade union, or association of employees, direct that a secret ballot or secret ballots of such members or employees shall be taken in the manner prescribed for the purpose of determining whether a majority of such members or employees is or is not in favour of the institution or continuance respectively of the strike.

(2) Where the Minister has made a direction for the taking of a ballot he shall—

- (a) appoint a returning officer and all necessary deputy returning officers, who shall have power to supervise, direct, and control, subject to the provisions of this Act and the regulations thereunder, all arrangements for the taking of such ballot; and
- (b) appoint a sufficient number of scrutineers, who shall be officers or members of the union or association affected.

48A. The court shall for the purpose of this Act have all the powers of a Royal Commission under the Royal Commissioners Evidence Act, 1901, or any Act passed in substitution for or amendment of that Act.

48B. If any person—

- (i) aids or instigates an illegal strike; or
- (ii) obstructs the taking of a ballot under this Act; or
- (iii) counsels persons who are entitled to vote at such ballot to refrain from so voting; or
- (iv) being an officer of a union or association refuses to assist in the taking of such a ballot by acting as

Defence to proceedings for illegal strike.

Substituted section, Act No. 16, 1918, s. 15.

Secret ballot when strike contemplated.

Substituted section, Ibid.

Additional powers of court to take evidence.

New section, Ibid.

Penalties for illegal strike or obstructing ballot.

New section, Ibid.

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as a scrutineer or providing for the use of the returning officer and his assistants such registers and other lists of the members of the union or association as the returning officer may require or otherwise; or

(v) directs or assists in the direction of an illegal strike or acts or purports to act upon or in connection with a strike committee in connection with an illegal strike;

he shall be deemed guilty of a default of public duty, and upon being so found by the court shall be liable to a penalty not exceeding fifty pounds or imprisonment for a period not exceeding six months.

Penalty for news-
paper publishing
matter encour-
aging strike.

New section,
Act No. 16,
1918, s. 15.

Penalty for
illegal
picketing.

New section,
Ibid.

Penalty for
declaring any
commodity
black.

New section,
Ibid.

48c. The proprietor and publisher of any newspaper which advises, instigates, aids or abets an illegal strike, shall for each offence be liable to a penalty not exceeding one hundred pounds.

48d. Any person who induces or attempts to induce any person to take part in an illegal strike shall be liable to a penalty not exceeding ten pounds or to imprisonment, with or without hard labour, for a term not exceeding one month.

48e. (1) No person or trades union shall, during the currency of any strike, do any act or thing to induce or compel any person to refrain from handling or dealing with any article or commodity in the course of transit thereof or in the process of the manufacture, sale, supply, or use thereof.

(2) The penalty for any breach of this section shall as against any trades union be a sum not exceeding one hundred pounds and as against any individual a sum not exceeding ten pounds, or imprisonment for a period not exceeding one month.

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PART VII.

BREACHES OF AWARDS AND OTHER OFFENCES.

Payment of wages awarded.

49. (1) Where an employer employs any person to do any work for which the price or rate has been fixed by an award, or by an industrial agreement, whether made under the repealed Acts or this Act, he shall be liable to pay in full in money to such person the price or rate so fixed without any deduction except such as may be authorised by any award or industrial agreement.

(2) Such person may, within six months after such money has become due, apply in the manner prescribed to the registrar or to an industrial magistrate for an order directing the employer to pay the full amount of any balance due in respect of such price or rate. Such order may be so made notwithstanding any smaller payment or any express or implied agreement to the contrary. The registrar or magistrate may make any order he thinks just, and may award costs to either party, and assess the amount of such costs.

(3) Such person may, within the said period of six months, in lieu of applying for an order under the last preceding subsection, sue for any balance due as aforesaid in any district court or court of petty sessions: Provided that any person feeling himself aggrieved by a judgment or order of such court given or made under this subsection may appeal therefrom to the Court of Industrial Arbitration as prescribed.

(4) Such person may take any such proceedings, and may recover any such balance due, and costs, notwithstanding that he may not be of full age either at the time of doing such work or at the time of taking such proceedings.

(5) Any person who enters into a contract with a contractor for the carrying out by the contractor of any work involving the payment of wages shall be liable for the payment of such wages unless upon final payment made by him to the contractor in relation to the contract he receives a statement in writing signed by the contractor

Recovery of wages.

Amended, Act No. 39, 1918, s. 5.

Order for payment.

Alternative power to sue.

Recovery of balance due.

New sub-section, Act No. 16, 1918, s. 16.

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that no wages are due and owing by the contractor in respect of the work at the time of such payment. Any person who knowingly makes or signs a false statement that no wages are due or owing by him in respect of any work shall be liable to a penalty of one hundred pounds or to imprisonment for not more than six months.

Breach of award or industrial agreement.

Penalty for
breach of
award.

50. (1) If any person commits a breach of an award or a breach of an industrial agreement, whether by contravening or failing to observe the same, or otherwise, the registrar or an industrial magistrate may order him to pay a penalty not exceeding fifty pounds.

Order for
payment of
wages.

Amended,
Act No. 39,
1918, s. 6.

(2) Where on making such order it appears that the breach complained of relates to the failure of the defendant to pay in full any wages (including wages for overtime) due to an employee at the price or rate fixed by the award or agreement, the registrar or magistrate may also make such an order with respect to such wages as might have been made in proceedings taken under section forty-nine. Such order may be made without motion, and shall be a bar to proceedings under the said section in respect of such wages.

Injunction
where breach
is wilful.

(3) Where an order is made under subsection one of this section against any person, and the registrar or magistrate is of opinion that the breach was committed by the wilful act or default of such person, he may on motion or without motion, and in addition to any order made, grant a writ of injunction to restrain such person from committing further or other breaches of the award or industrial agreement.

If any person disobeys such writ or injunction he shall be guilty of a misdemeanour and shall be liable to imprisonment for any period not exceeding six months.

Such person may be committed for trial for such offence by any justice or justices acting under and in pursuance of the Justices Act, 1902, and any Acts amending the same, or by the court. For the purposes of such committal the court shall have the powers of a justice or justices under the said Acts.

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(4) Proceedings for a breach of an award or an industrial agreement may be taken and prosecuted by the Minister, or an employer, or the secretary of an industrial union concerned in the industry covered by such award or industrial agreement.

The costs of any such proceedings shall be paid by the complainant if the order is not made, and by the defendant if the order is made. Such costs shall be according to a scale to be fixed by the court.

51. If the secretary of an industrial union of employees or any person acting or purporting to act on behalf of any such industrial union receives any money paid in respect of any act constituting a breach of an award or industrial agreement otherwise than in pursuance of the order or with the previous approval of the registrar or an industrial magistrate, he shall be liable to a penalty not exceeding twenty pounds.

Who may take proceedings for penalty.

Secretary of union receiving money for breach of award.

Unlawful dismissal.

52. If an employer dismisses from his employment any employee by reason of the fact that the employee is a member of a board or of a trade union, or an industrial union, or has absented himself from work through being engaged in other duties as member of a board, or is entitled to the benefit of an award or of an industrial agreement, the court may order such employer to pay a penalty not exceeding twenty pounds for each employee so dismissed.

Penalty for unlawful dismissal.

In every case it shall lie on the employer to satisfy the court that such employee was dismissed from his employment for some substantial reason other than that above mentioned in this section.

No prosecution for an offence under this section shall be commenced except by leave of the court.

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New Part,
Act No. 16,
1918, s. 17.

Repeal of s. 7
of Trade
Union Act.

Powers of
trade union
with regard
to its funds.

PART VIIA.

TRADE UNIONS.

52A. (1) Section seven of the Trade Union Act of 1881 is repealed.

(2) A trade union shall have power to apply and use the moneys and other property of the union for or in connection with any lawful object or purpose for the time being authorised by its rules, and without limiting the generality of this provision may—

- (a) acquire, purchase, take on lease, hold, sell, lease, mortgage, exchange, and otherwise own, possess, and deal with in the names of the trustees for the time being of such union any real or personal property (including shares in any registered company, whether registered in New South Wales or not), and no purchaser, assignee, mortgagee, or tenant shall be bound to inquire whether the trustees have authority for any sale, exchange, mortgage, or letting, and the receipt of the trustees shall be a discharge for the money arising therefrom;
- (b) subject to the provisions of the ~~next~~ succeeding subsection hereof apply to the court or to any district court or court of petty sessions having jurisdiction in the locality for and obtain an order directing the payment by any of its members of any fine, levy, penalty, call, or subscription in pursuance of the rules of the union;
- (c) provide for the application of its money and property to the furtherance of political objects so long as rules of the union are in force providing—
 - (i) that any payments in the furtherance of such objects are to be made out of a separate fund;
 - (ii) that contribution to such separate fund shall not be a condition of admission to or membership of the said union;
 - (iii)

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(iii) that a member who does not contribute to such separate fund shall not be excluded from any benefits of the union or placed under any disability or at any disadvantage as compared with other members of the union by reason of his failure to so contribute.

(3) The expression "political objects" in the last preceding subsection means the payment of any expenses incurred either directly or indirectly by a candidate or prospective candidate for election to Parliament or to any public office, before, during, or after the election in connection with his candidature or election; or the holding of any meeting or the distribution of any literature or documents in support of any such candidate or prospective candidate; or the maintenance of any person who is a member of Parliament or who holds a public office; or the registration of electors, or the selection of a candidate for Parliament or any public office; or the holding of political meetings of any kind, or the distribution of political literature or political documents of any kind, unless the main purpose of the meeting or of the distribution of the literature or documents is the furtherance of the objects set out in the definition of "Trade Union" in section thirty-one of the Trade Union Act of 1881, or the maintenance and publication of a newspaper other than a non-political trade journal.

(4) The expression "public office" in the last preceding subsection means the office of member of any shire or municipal council, or the Municipal Council of Sydney, or of any public body which has power to raise money, either directly or indirectly, by means of a rate.

52b. The provisions of the last preceding section shall apply to a union which is in whole or in part an association or combination of other unions, as if the individual members of the component unions were the members of that union and not the unions. Application of last preceding section to unions.

52c. If any member of a trade union alleges that he is aggrieved by a breach of any rule relating to any of the matters mentioned in section 52A subsection (2) (b) of this Act, he may complain to the court, which court, Right of appeal.

after

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after giving the complainant and any representative of the union the opportunity of being heard, may, if it considers that such a breach has been committed, make such an order for remedying the breach as it thinks just under the circumstances, and any such order shall be binding and conclusive on all parties without appeal.

Attachment
of union
funds.

52d. No such separate fund established for political purposes or any property in which such fund may be invested shall be liable to attachment in the enforcement of any order for payment of any penalty made against the union.

Powers of
court to
enforce
certain
agreements.

52e. The court may entertain and adjudicate upon any legal proceedings instituted for the purpose of directly enforcing or recovering damages for a breach of any of the following agreements:—

- (a) The constitution or rules of the trade union.
- (b) Any agreement between members of a trade union as such concerning the conditions on which any members for the time being of the trade union shall or shall not sell their goods, transact business, employ or be employed.
- (c) Any agreement for the regulation of any business or industry as between employers and employees made by a trade union with an employer or employers.
- (d) Any agreement made between one trade union and another; or
- (e) Any bond to secure the performance of any of the above-mentioned agreements:

Provided that such agreements shall be in writing, and that copies of them, verified as prescribed, shall have been filed with the court.

Powers of
court.

52f. For the purpose of exercising the jurisdiction and powers conferred upon it by this Part the court shall have all the powers of the Supreme Court and shall hear and determine according to equity and good conscience all questions arising for its determination hereunder and the judgment of the court upon such questions shall have force and effect as judgments, orders, or decrees of the

Supreme

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Supreme Court in its common law or equitable jurisdiction according to the substance thereof, and shall be so recorded by the Prothonotary of the Supreme Court or Master in Equity as the case may require.

52c. Where any trade union fails within the time prescribed by the court to pay any penalty imposed by the court the trade union shall be wound up. The court shall appoint a receiver of the assets of the trade union, who shall forthwith proceed to collect such assets and wind up the union's affairs, and shall, after paying the costs, charges, and expenses of the winding-up, pay the penalties due to the Crown and other debts of the trade union and thereafter shall distribute the residue of such proceeds amongst the persons including members of the union who appear to be entitled to the same.

Any receiver so appointed shall, in respect of the property and affairs of the union, have all the powers, rights and duties of a liquidator in the voluntary winding-up of a company under the Companies Act, 1899.

52h. After service of an order for the payment of any penalty by any trade union it shall not be lawful for any bank, corporation, company, or person, whether as principal or agent, to account for or cash cheques, or orders on the funds or account of the union, or to deal in any way with its property, or to lend moneys to the union except at the direction of the receiver appointed by the court; and any person who with knowledge or notice of any such order receives, expends, or otherwise deals with such funds or property, except in accordance with an order of the court shall be liable to make good to the receiver any loss occasioned to the assets of the union by the receipt, expenditure, or dealing, and to a penalty not exceeding five hundred pounds:

Provided that any person, bank, or corporation shall be relieved of all liability under this section on publication in the Government Gazette of a notice to that effect under the hand of the Minister.

52 i. (1) All persons who are, by the nature of their occupation or employment, of the class of which a trade union is constituted, and who are not of general bad character, shall be entitled to be admitted to membership

Enforcement
of order of
court
imposing
penalty.

Penalty:
stop-order.

Persons
entitled to
membership
of union.

of

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of the union, and to remain members thereof and enjoy all advantages of membership so long as they shall comply with the rules of the union.

(2) Any question or dispute as to the character of any applicant or the reasonableness of any admission fee, subscription, fine or levy or other requirements of the rules of any trade union, shall be determined by the court, which shall also have power to direct that the rules of a trade union shall be altered or annulled in any particular in order to bring them into conformity with what it declares to be reasonable in the circumstances, and upon any such direction being given the rules affected shall be deemed to have been altered or annulled accordingly.

Illegal rules.

52 j. No trade union shall register any rule which is contrary to any term or provision of an award.

Returns by trade unions.

52 k. Every trade union shall within three months of the passing of this Act and thereafter annually make returns to the Registrar of Trade Unions with respect to its rules, the names and the addresses recorded in the books of such trade union of its members and the persons occupying executive and other offices in the union in the manner and at the times prescribed; and the court may order any union which fails to make full and proper returns as aforesaid, or to amend its rules in accordance with any order made by the court, or to admit to membership any person whom the court declares is entitled to such admission to pay a penalty not exceeding one hundred pounds.

PART VIII.

GENERAL AND SUPPLEMENTAL.

Fines and subscriptions payable to unions.

Fines and subscriptions payable to union.

53. The registrar or an industrial magistrate may order the payment by any member of an industrial union of any fine, levy, penalty, or subscription payable in pursuance of the rules of the union.

Enforcement

*Industrial Arbitration.**Enforcement of orders.*

54. (1) Where an order is made under sections forty-four, forty-six, forty-seven, forty-nine, fifty, fifty-two, or fifty-three, that any person or union shall pay the amount of any money due or any penalty, such order shall have the effect of a judgment for the amount of such money or of such penalty in the district court or court of petty sessions named in such order, or if no such court is so named, in the metropolitan district court at the suit of the Crown or person or union respectively, against the person or union against whom such order has been made; and such amount may be recovered and such recovery may be enforced by process of such court as in pursuance of such judgment.

(2) Any property of a union, whether in the hands of trustees or not, shall be available to answer any order made as aforesaid.

Appeal to court.

55. (1) From any order of the registrar, or any industrial or other magistrate or justices under this Act, imposing a penalty or ordering the payment of any sum of money or any penalty, an appeal shall lie to the court.

On any such appeal the court may either affirm the order appealed from or reverse the said order or reduce the amount so ordered to be paid or the amount of the penalty; and, in any case, the court may make such order as to the costs of the appeal, and of the proceedings before the registrar, magistrate, or justices, as it thinks just.

(2) The registrar, or any industrial or other magistrate, or justices, may on the application made by any party to any proceedings for the payment of money or a penalty under this Act state a case for the opinion of the court, setting forth the facts and the grounds for any order or conviction made by him or them.

(3) The provisions of the Justices Act, 1902, and any Act amending the same, which relate to appeals to a court of quarter sessions and to the stating of cases by justices for the opinion of the Supreme Court, and the

Enforcement of certain orders.

Appeal from registrar or magistrate.

Case may be stated.

Application of provisions of Justices Act.

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the decision of any such court thereon, and the carrying out of such decision shall, mutatis mutandis, and subject to any regulations made by the court under this Act, apply to and in relation to appeals to and cases stated for the opinion of the court under this subsection.

No other appeals allowed.

Rules to govern the court and boards.

Adjournments of court.

Decision of court to be final.

Court reserving its decision.

(4) No other proceedings in the nature of an appeal from any such order or by prohibition shall be allowed.

Procedure and decisions of court and boards.

56. The court or a board exercising the jurisdiction conferred by this Act shall be governed in its procedure and in its decisions by equity and good conscience, and shall not be bound to observe the rules of law governing the admissibility of evidence.

57. Where the judge is unable to attend at the time and on the day appointed for the hearing of any matter by the court, the registrar, or, in his absence from the court, the chief clerk shall adjourn the court, and also adjourn the hearing of any cases set down for that day to such day as he may deem convenient.

58. (1) Any decision of the court shall be final; and no award, and no order, or proceeding of the court, shall be vitiated by reason only of any informality or want of form or be liable to be challenged, appealed against, reviewed, quashed, or called in question by any court of judicature on any account whatsoever.

(2) No writ of prohibition or certiorari shall lie in respect of any award, order, proceeding, or direction of the court relating to any industrial matter or any other matter which on the face of the proceedings appears to be or to relate to an industrial matter.

(3) The validity of any proceeding or decision of the board or of a chairman of a board shall not be challenged except as provided by this Act.

59. In any proceeding before the court it may reserve its decision.

Where a decision has been so reserved it may be given at any continuation or adjournment of the court, or at any subsequent holding thereof, or the judge may draw up such decision in writing, and, having duly signed the same,

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same, forward it to the registrar. Whereupon the registrar shall notify the parties of his intention to proceed at some convenient time and place by him specified to read the same, and he shall read the same accordingly, and thereupon such decision shall be of the same force and effect as if given by the court.

Evidence of award and its validity.

60. Evidence of any award, order, proclamation, notification, rule, or regulation made under the authority of this Act or any of the repealed Acts, may be given by the production of any document purporting to be a copy thereof and purporting to be printed by the Government Printer or by the authority of the Minister.

Copy of Gazette to be evidence.

Penalties and costs.

61. Any penalty imposed by or under this Act or the regulations may, except where otherwise provided, be recovered upon summary conviction before a stipendiary, police, or industrial magistrate, or any two justices in petty sessions.

Recovery of penalties.

62. The amount of any penalty recovered under this Act shall be paid into the Treasury and carried to the Consolidated Revenue Fund.

Penalties to be paid to Consolidated Revenue.

63. (1) Except where otherwise in this Act provided, the court or the registrar, or any industrial or other magistrate or justices, may in any proceedings for a penalty or prosecution under this Act, and in any proceedings under section fifty-three or for a writ of injunction, make such order as to the payment of costs as may be thought just, and may assess the amount of such costs.

Orders for costs.

(2) Every order for the payment of costs made by the court or the registrar or the industrial magistrate shall have the effect of and be deemed to be a judgment for such amount in the district court or court of petty sessions named in the order, or if no such court is so named, then in the metropolitan district court, at the suit of the person in whose favour such order is made, against the person so ordered to pay costs.

Enforcement of order.

Such

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Such amount may be recovered, and such recovery may be enforced by process of such court as in pursuance of such judgment.

Penalty for wilfully false statement.

64. Whosoever, before a board or the court, wilfully makes on oath any false statement knowing the same to be false shall be guilty of perjury.

The registrar, industrial magistrate, and inspectors.

Appointment of registrar.

65. (1) The Governor may, subject to the Public Service Act, 1902, appoint an industrial registrar who shall have the prescribed powers and duties.

Deputy registrar.

(2) The Governor may appoint any person to act as a deputy for the registrar appointed under this Act for a time not exceeding in any case thirty days while such registrar is absent from his duties for any cause, and every such deputy shall while acting as such have the same jurisdiction and power, and perform the same duties as if he were the registrar.

His powers and duties.

(3) The judge may direct the registrar to inquire into any matter as to which he requires information for the purpose of the exercise of the jurisdiction of the court in any matter not being proceedings for a penalty under this Act, and the registrar shall inquire accordingly, and report to the court.

For the purpose of such inquiry and for the purpose of any matter which by this Act or the regulations is referred to him, the registrar may summon any persons, administer oaths and take affidavits, and examine parties and witnesses.

Every person summoned by the registrar shall be bound to attend upon such summons, and shall for disobedience thereto be liable to a penalty not exceeding fifty pounds.

Powers of registrar.

(4) For the purpose of hearing and determining any proceedings for a penalty or for the recovery of money under this Act, the registrar shall have the powers of two justices of the peace within any police district.

Appointment and powers of industrial magistrates.

66. (1) The Governor may appoint industrial magistrates, who shall have the qualifications of a police magistrate, and who shall throughout the State have the jurisdiction

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jurisdiction and powers conferred by this Act on an industrial magistrate, and in the exercise of such jurisdiction may do alone whatever might be done by two or more justices sitting in petty sessions.

(2) The Governor may appoint any person duly qualified as aforesaid to act as a deputy for any industrial magistrate appointed under this Act for a time not exceeding in any case thirty days while such magistrate is absent from his duties for any cause, and every such deputy shall while acting as such have the same jurisdiction and power and perform the same duties as if he were an industrial magistrate.

67. (1) The Governor may subject to the Public Service Act, 1902, appoint inspectors who shall have the powers and duties prescribed.

Any such inspector may exercise the following powers and perform the following duties in respect of an industry as to which an award or an industrial agreement is in force:—

- (a) He may at any reasonable times inspect any premises of any employer upon which any such industry as aforesaid is carried on, and any work being done therein.
- (b) He may at any reasonable times require the employer in such industry to produce for his examination, and may examine, any time-sheets and pay-sheets of the employees in such industry.
- (c) He may at any reasonable times examine any employee in such industry as to the prices for piece-work and the rate of wages paid to him, and as to his hours of work as such employee.
- (d) He may, on obtaining the authority of the Minister, institute proceedings for a penalty under section fifty-three.

An inspector shall report to the Minister all breaches of this Act, or of an award or industrial agreement, which have come to his knowledge.

(2) No inspector shall have any authority under this Act to enter a private dwelling-house, or the land used in connection therewith, unless some manufacture or trade in which labour is employed is carried on therein.

*Industrial Arbitration.*Obstructing
inspector.

(3) If any person obstructs any inspector in the exercise of his powers under this Act, or fails when duly required as aforesaid to produce any time-sheets or pay-sheets, he shall be liable to a penalty not exceeding ten pounds.

*Miscellaneous.*Time-sheets
and pay-
sheets to be
kept.Amended,
Act No. 16,
1918, s. 18.

68. (1) Every employer in an industry in respect of which an award or an industrial agreement is in force shall keep, or cause to be kept, from day to day at the workshop or factory where he carries on his business, in the manner and to the effect prescribed, time-sheets and pay-sheets of such employees, correctly written up in ink.

If he fails to carry out any of the requirements of this section he shall be liable to a penalty not exceeding ten pounds.

Exhibition of
award.

(2) A copy of any award whether made under the repealed Acts or this Act shall be exhibited and kept exhibited by every employer carrying on an industry to which it relates, at the workshop or factory where he carries on his business so as to be legible by his employees. If such employer fails to carry out the provisions of this subsection he shall be liable to a penalty not exceeding ten pounds.

(3) The penalty imposed by each of the preceding subsections may in addition to being recoverable in terms of section sixty-one of this Act, be ordered to be paid by the registrar or an industrial magistrate subject to the provisions of section fifty-four of this Act.

Section 69.
Repealed,
Act No. 16,
1918, s. 19.Penalty for
contract or
combination
in restraint of
trade.**69. *** * * * *

70. Any person who, either as principal or as an agent, makes or enters into any contract or agreement, or is or continues to be a principal of or engages in any combination or conspiracy with intent to restrain the trade of the State in any necessary commodity to the detriment of the public, shall be liable to a penalty not exceeding five hundred pounds.

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71. Any person who monopolises or attempts to monopolise, or combines or conspires with any person to monopolise any part of the trade of the State with intent to control, to the detriment of the public, the supply or price of any necessary commodity, shall be liable to a penalty not exceeding five hundred pounds.

Penalty for monopoly.

Regulations.

72. The judge may repeal any regulations made under the repealed Acts and make regulations for carrying out the provisions of this and the preceding parts of this Act, and in particular, but without derogating from the generality of such powers—

Regulations made by judge.

Amended, Act No. 16, 1918, s. 20.

- (a) prescribing the forms of references and applications to a board and generally the forms to be used in carrying out this Act;
- (b) prescribing the form of oath to be taken by members of boards and committees;
- (c) regulating the exhibition by an employer of an award;
- (d) prescribing the form and mode of service of notices of meetings of a board and of a committee, and regulating the convening of such meetings;
- (e) prescribing the giving of notice of inspection by a board or its members of premises used in any industry, and prescribing the form and regulating the service of such notice;
- (f) regulating the procedure at meetings of boards and committees;
- (g) providing for the payment of expenses of witnesses and persons summoned by the registrar or summoned to attend a conference under the provisions of Part V;
- (h) regulating the procedure to be followed in proceedings before the court and before the registrar and an industrial magistrate, and in enforcing judgments, convictions, and orders given and made under this Act;
- (i) for the enforcement of orders for penalties and orders for attachments made under this Act;
- (j)

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- (j) prescribing the powers and duties of the registrar, and regulating the registration under this Act of industrial unions;
- (k) imposing any penalty not exceeding ten pounds for any breach of such regulations;
- (l) as to matters which by this Act may be prescribed.

Publication
of regula-
tions.

73. (1) Regulations made under this Act, on being approved by the Governor and published in the Gazette, shall, if not disallowed as hereinafter provided, and if not repugnant to this Act, have the force of law.

(2) All such regulations on being gazetted shall be laid before both Houses of Parliament within fourteen days if Parliament is then sitting, and if not sitting, then within fourteen days after the next meeting of Parliament. But if either House of Parliament passes a resolution of which notice has been given at any time within fifteen sittings days after such regulations have been laid before such House disallowing any regulation, such regulation shall thereupon cease to have effect.

New Part,
Act No. 16,
1918, s. 21.

The Board of
Trade.

Constitution
of Board.
Amended,
Act No. 39,
1918, s. 7.

Commis-
sioners to
represent
rural indus-
tries.

New sub-
section,
Ibid.

PART IX.**THE BOARD OF TRADE.**

74. There is hereby constituted a body corporate to be known as "The New South Wales Board of Trade," which shall have perpetual succession and a common seal.

75. (1) The Board of Trade shall comprise a president, who shall be a judge of the court, a deputy president, four commissioners, and one or more additional commissioners appointed to represent rural industries.

(1a) Any additional commissioner appointed to represent rural industries shall sit with the Board of Trade when it is considering any of the matters referred to in section seventy-nine of this Act and when any other matters directly affecting rural industries are being dealt with, the consideration of which the president is of opinion renders his presence desirable, and on no other occasion.

(2)

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(2) The Minister shall be an associate commissioner of the Board of Trade, and may take part in its deliberations, but shall not cast a vote in connection with the determinations of the board.

(3) The president shall have a casting as well as an original vote upon any proceedings of the board in connection with which the vote taken is otherwise equally divided.

(4) The president shall sit with the Board of Trade whenever it is exercising the powers and functions conferred upon it by sections seventy-nine and eighty of this Act, and on such occasions five members, including the president, shall form a quorum :

Provided that in the absence of the president the Board of Trade may by his direction hold meetings, at which the deputy-president shall preside, for the purposes of making any investigation or inquiry under sections seventy-nine and eighty aforesaid for consideration at subsequent sittings of the Board of Trade presided over by the president.

(5) When the Board of Trade is exercising the powers and functions conferred upon it by this Act other than those specified in sections seventy-nine and eighty, it may sit in two divisions, and on such occasions three members, of whom the president or deputy-president shall be one, shall form a quorum.

(6) The Governor may appoint any judge to act as president during the illness or absence from duty of the president. Any judge so appointed shall, during the term of his appointment, have all the powers and perform all the duties of the president.

76. The Governor shall, as soon as practicable after the passing of this Act, make all necessary appointments to the Board of Trade; the members of such Board of Trade, other than the president and the Minister, shall be paid such fees or salaries and allowances as may be prescribed; and such fees or salaries and allowances shall become a charge upon the Consolidated Revenue:

Provided that any additional commissioner appointed to represent rural industries shall not be paid a salary, but shall receive such fees and allowances as may be prescribed.

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Period of appointment.

77. (1) The members of the Board of Trade shall be appointed for a period of five years, provided that any member may be suspended from office for misbehaviour or incapacity.

(2) The Minister shall, within seven days after the suspension of any member of the Board of Trade, if Parliament is then sitting, or if Parliament is not then sitting, within seven days after the next meeting of Parliament, cause to be laid before both Houses of Parliament a full statement of the grounds of suspension. A member who has been suspended shall be restored to office unless each House of Parliament, within forty days after the statement has been laid before it in the same session, pass an address praying for his removal on the grounds of proved misbehaviour or incapacity.

Casual vacancies.

78. On the happening of any vacancy in the office of Commissioner of the Board of Trade the Governor shall appoint a person to fill the vacant office.

In the case of illness, absence, or suspension of any Commissioner of the Board of Trade the Governor may appoint a person to act as a deputy-commissioner during such illness, absence, or suspension, and the deputy so appointed shall have all the powers and perform all the duties of the position.

Living wage.

79. (1) The Board of Trade shall from year to year after public inquiry as to the increase or decrease in the average cost of living declare what shall be the living wages to be paid to adult male employees and to adult female employees in the State or any defined area thereof. In declaring such living wages the Board of Trade shall make a separate public inquiry into the cost of living of employees engaged in rural occupations, and shall make a separate declaration as to the living wages to be paid to such employees and shall declare what deductions may be made from such wages for board or residence or board and residence—and for any customary privileges or payments in kind conceded to or made to such employees.

Inquiry by Board of Trade into conditions of rural industries.

New subsection, Act No. 50, 1919, s. 8.

(1b) In the course of the public inquiry required to be made by the Board of Trade preceding its declaration of the living wages to be paid to adult employees in rural occupations, the board shall take evidence upon the conditions of the rural industries and of their ability to bear

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bear additional burdens in wages and the probable effect of the same upon production, and shall report its conclusions upon such evidence: and further, shall take such conclusions into consideration and give effect thereto as far as is reasonable in making its declaration as to the living wages to be paid to such employees, and may also, should it think fit, refrain from making such declaration in such occupation.

(1c) The Board of Trade may in its discretion ^{New} at any time notwithstanding the existence of declarations as to living wages made by it for defined areas of ^{subsection added,} the State, declare what shall be the living wages to be paid in the State or any defined area thereof to adult male employees and to adult female employees and for the purposes aforesaid may rescind or vary any existing declaration.

(2) No industrial agreement shall be entered into and no award made for wages lower than such living wages.

(3) Any aged, infirm, or slow worker engaged in any rural occupation who may deem himself unable to earn the living wages declared by the Board of Trade may apply to the registrar or to any person appointed by such board for a permit in writing to work for less than the living wage. Copies of all such permits shall be forwarded to the registrar, who may at any time cancel or amend the same.

80. Notwithstanding the provisions of the Apprentices Act, 1901, the Apprentices (Amendment) Act, 1915, and this Act, and notwithstanding the effect of any custom of or against apprenticeship, the Board of Trade shall—

- (a) determine in what occupations and industries apprenticeship shall be a condition of employment of minors;
- (b) prescribe the hours of employment, wages, and conditions of apprenticeship;
- (c) determine whether and to what extent there shall be a limitation of the number of apprentices indentured in any trade or calling;

(d)

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- (d) determine to what extent technical education if procurable shall be obligatory upon apprentices and their masters;
- (e) co-operate with the Department of Education in encouraging young persons to attend technical, trade, and continuation schools;
- (f) establish and maintain an apprenticeship register and record therein all indentures or other contracts of apprenticeship, and protect the contracts and interests of apprentices and all workers of minor age who are learners, and ensure the attendance of apprentices and learners at technical or trade schools;
- (g) prescribe standard forms of apprenticeship for different trades and callings, and the manner in which and the persons by whom the making, carrying out, and transfer of indentures or other contracts of apprenticeship shall be supervised;
- (h) control and direct the conditions in all respects of apprenticeship in any industry.

Powers of
Board of
Trade.

81. (1) Upon the exercise by the Board of Trade of the powers and functions specified in the two preceding sections the Governor may make regulations incorporating the determinations and directions of such board and any matters necessary or convenient to be prescribed for carrying such determinations and directions into effect.

(2) Upon the publication of any such regulations the provisions of awards relating to the matters dealt with by the Board of Trade shall cease to have effect.

Further
powers of
Board of
Trade.

82. The Board of Trade is further empowered to exercise the following functions and perform the following duties:—

- (a) To encourage and create councils of employers and employees for the purpose of encouraging the proper apprenticeship of all minors and provide for the welfare of juvenile labour.
- (b) To acquire and disseminate knowledge on all matters connected with industrial occupations with a view to improving the industrial relationship between employers and workers and to combat the evils of unemployment. (c)

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- (c) To collect and publish information relating to or affecting industrial conditions.
- (d) To propound schemes for welfare work, and report to the Governor on all matters relating to such work and to the insurance of employees against loss or injury caused by unemployment, sickness, or accident, or industrial diseases.
- (e) To report on any matter referred to as to the prices of commodities, and as to whether or not monopolies or trade rings exist for the purpose of unfairly keeping up the prices of commodities.
- (f) To investigate and report on the existence of sweating in an industry.
- (g) To report upon the productivity of industries, the number of employees in any industry, and the effect or probable effect of the regulation of the conditions of any industry upon such productivity.
- (h) To consider and report upon the industrial efficiency of the community, the organisation of the labour market and opportunities of employment, and all questions relating to unemployment.
- (i) To collect and publish from time to time statistics of vital, social and industrial matters, and on labour employment and unemployment in specific industries, and on other prescribed matters.
- (j) To encourage and assist in the establishment in different industries of mutual welfare committees and industrial councils, and of subsidiary shop committees for individual enterprises.
- (k) To encourage and assist schemes for mutual co-operation and profit-sharing between employers and employees.
- (l) To encourage and assist in the establishment of hostels for women workers and workmen's clubs and libraries.
- (m) To report and advise on schemes for the better housing of the people.
- (n) To consider and report upon any other matter referred to it by the Minister.

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Board to
have powers
of Royal
Commission.

Collection of
statistics.

Information
to be
supplied.

Power of one
or more
members.

Amended,
Act No. 19,
1920, s. 5.

Secrecy of
board.

General rules.

83. The Board of Trade shall, in investigating any matter for the purposes of this Act, have all the powers of a Royal Commission under the Royal Commissioners Evidence Act, 1901, or any Act passed in substitution for or any amendment of that Act.

84. For the purpose of enabling the statistics referred to in this Act to be collected, all prescribed persons shall to the best of their knowledge and belief when required by the Board of Trade so to do fill up and supply in accordance with the instructions contained in or accompanying the prescribed form, the particulars specified in that form.

85. Every person shall to the best of his knowledge and belief answer all questions asked him by the Board of Trade, or by its duly authorised officers, necessary to obtain any information required for the purpose of any statistics authorised by this Act to be collected.

86. The Board of Trade is authorised to appoint any one or more of its members to conduct inquiries into specified matters, including matters under sections seventy-nine and eighty of this Act for consideration at subsequent meetings of the Board of Trade.

87. Each member of the Board of Trade shall upon his appointment take an oath not to disclose (except so far as may be necessary in the execution of his duties as such member) any matter or evidence before the board relating to trade secrets, or the financial position of any person, or the contents of any books or documents produced before the board, and if he violates his oath he shall be liable to a penalty not exceeding five hundred pounds, and on conviction for such offence he shall cease to be a member.

88. The Governor may, subject to this Act, make general rules—

- (a) regulating the practice, procedure, and forms under this Part of this Act;
- (b) prescribing the powers, duties, and rights of any officer of the Board of Trade;
- (c) for the making and enforcement of any orders made under this Part of this Act;
- (d) regulating the distribution of business between the members of the board;
- (e)

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- (e) providing for the payment of witnesses' expenses; and
- (f) generally for giving effect to the provisions of this Part of the Act and the rules made thereunder, and may by such regulations impose penalties not exceeding fifty pounds for any breach thereof.

89. Any person who hinders or obstructs the board ^{Penalty.} or any member or officer thereof in the exercise of any power conferred by this Act shall for every such offence be liable to a penalty not exceeding fifty pounds.

PART X.

THE ORGANISATION OF THE LABOUR MARKET.

New Part,
Act No. 16,
1918, s. 21.

DIVISION 1.—*State Labour Exchanges.*

90. The Minister shall establish, maintain, and conduct in the manner prescribed, in Sydney, and in such other places as he thinks fit, free employment agencies, which agencies shall be known as State Labour Exchanges.

91. The functions of the State Labour Exchanges shall be to bring together intending employers and persons seeking employment; to make known the opportunities for employment and self-employment in the State; to encourage minors and others to undertake training in skilled employments; to provide industrial or agricultural training for vagrants and other persons unsuited for ordinary employments; and to carry out any other duties prescribed. For any of the above purposes a State Labour Exchange may co-operate with and assist any other labour exchange or licensed private employment agency.

92. (1) The Minister may authorise a State Labour Exchange to make advances by way of loan towards meeting the expenses of persons seeking to avail themselves of opportunities of employment in localities distant from those in which they find themselves.

Advances
to meet
expenses of
travelling to
work.

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(2) When any such advance has been made, the Minister may order that the amount of such advance shall be a charge on any moneys which are then, or which may thereafter be due to the person to whom such advance is made from his then or future employer, for wages or in respect of work done. On the making of any such order, the employer for the time being of such person, or any employer who shall not have discharged his indebtedness to such person, shall on being notified of such order pay such moneys to the Minister, when and as they become due and payable, in satisfaction of the charge imposed by the order.

(3) Such order may be for the repayment of the amount of such advance, in one sum or by such instalments as the Minister may direct.

(4) No charge upon, or assignment of his wages, or moneys in respect of work done, or to be done, whenever or however made by any such person shall have any force whatever to defeat or affect any such order, and such order shall have effect as if no such charge or assignment existed.

Penalty for obtaining loan by fraud.

93. (1) Any person obtaining or attempting to obtain under false pretences, or by means of any other fraud or deceit, an advance by way of loan, under the last preceding section, shall be guilty of a misdemeanour. Penalty, ten pounds, or imprisonment not exceeding six months.

Penalty for false statement.

(2) If any person makes any wilfully false statement or false representation to any officer in superintendence of a State Labour Exchange, or to any person acting for or for the purposes of any such labour exchange, with intent to obtain employment or to procure labour in preference to others, or harass or molest others, he shall be guilty of a misdemeanour. Penalty, ten pounds, or imprisonment not exceeding six months.

(3) If any person knowingly—

(a) sends, delivers, or causes to be sent or delivered to any officer any writing which purports to be signed or sent by any other person without such person's authority or in the name of any fictitious person; or

(b)

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(b) makes, sends, or delivers any written communication which purports to be a communication from any Government department or any officer thereof, and which is not so in fact, he shall be guilty of a misdemeanour. Penalty, ten pounds, or imprisonment not exceeding six months.

DIVISION 2.—*Private employment agencies.*

94. A person shall not, after the passing of this Act, open, or carry on for profit any agency for procuring or assisting to procure employment or labour or any business having as one of its purposes the bringing together of intending employers and persons seeking employment, unless he is the holder of a license under this Part of this Act. Every such license shall be in the form prescribed, and shall, subject to the provisions of this Act, remain in force for one year from the date thereof, but may be renewed.

Such license, together with a copy of this section, shall be posted in a conspicuous position in the place in which the agency or business to which it relates is carried on.

95. (1) Application for the issue or renewal of such license shall be made to the Minister in the form and in the manner prescribed, and shall be accompanied by the prescribed fee.

(2) The Minister may refer the application to a magistrate for inquiry as to whether the applicant is from his character or previous conduct a fit person to hold a license under this Part of this Act. A license shall not be issued or renewed unless the Minister or such magistrate determines that the applicant is a fit person to hold the license.

The magistrate shall for the purposes of any such inquiry and determination have the same powers as if he were sitting in a court of petty sessions, and the inquiry were a matter for hearing and determination therein.

The applicant and all persons who in the manner prescribed notify their objection to the issue or renewal of the license shall have notice of such inquiry and shall be entitled to be heard thereat, personally or by counsel,

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attorney, or agent. There shall be an appeal as prescribed by way of rehearing from the decision of a magistrate to the court.

Licensee to
keep
registers.

96. It shall be the duty of every holder of a license under this Part of this Act to keep as prescribed—

- (a) a register in which shall be entered the age, sex, trade or occupation, name and address of every person who applies to such licensee for employment, and pays a fee in respect of his application, and the name and nature of the employment required by him; and
- (b) a separate register in which shall be entered the name and address of every person who so applies for labour, and pays a fee in respect of his application, and the name and nature of the employment which he offers;
- (c) a further separate register of all engagements made by or through such licensee; and
- (d) the originals of all letters received by such licensee, or by his agents or servants in connection with his agency or business during the next preceding two years.

Such registers and letters shall, at all reasonable hours, be open to the inspection and examination of any officer appointed by the Minister for the purpose.

Scale of fees.

97. The scale of fees chargeable by and payable to licensees in respect of agencies or businesses to which their licenses relate shall be as prescribed, and the said scale of fees shall be posted, and kept posted, in some conspicuous place in the premises in which such agencies or businesses are carried on so as to be seen by all persons entering such premises.

No fees to be
received
except those
prescribed.

98. (1) A licensee shall not, directly or indirectly—

- (a) demand or receive for or in respect of the registration or engagement of any person any greater or other fees than those prescribed;
- (b) take or accept any goods or chattels in payment, or as security for the payment of the prescribed fees, or receive or accept any reward or other consideration in addition to the said fees;

(c)

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(c) give or pay to any employer, or to the foreman or agent of any employer, for or in respect of the hiring of any employee any share or part of the prescribed fees; nor shall any employer, foreman, or agent, directly or indirectly take or receive from a licensee any share or part of such fees;

(d) keep as lodgers any persons seeking employment, or have any share or interest in the keeping of a lodging-house for such persons.

(2) Any sum of money or any goods or chattels received, taken, accepted, given or paid in contravention of the provisions of the preceding subsection, may, notwithstanding that a penalty for such contravention may be enforced, be ordered by a magistrate to be forfeited to the Crown, or if such money, goods, or chattels shall have been exacted under duress exercised by the person receiving or taking the same to be repaid or redelivered to the person from whom the exaction has been made.

(3) The fact that any member of the licensee's household keeps any such person as lodgers, or keeps any lodging-house for such persons, shall be *prima facie* evidence that the licensee so keeps such persons or has an interest in the keeping of such lodging-house as aforesaid.

(4) Every contract or agreement made between any licensee or member of his household and any other person relating to the keeping as lodgers of persons seeking employment, or to the keeping of a lodging-house for such persons, shall be illegal and void for all purposes.

99. Where any person who applies for employment or for labour has paid to any licensee a registration fee and such person does not obtain employment or labour through such licensee within fourteen days after registration as aforesaid, then the licensee shall upon demand repay and return to such person the fee so paid, less any out of pocket expenses incurred by the licensee in respect of such person: Provided that such demand shall be made within thirty days after the expiration of the period aforesaid, and that the amount of out of pocket expenses

Licensee
not to share
fees with
employer.

Licensee not to
keep as lodgers
any persons
seeking
employment.

Registration
fee to be
repaid if
employment
or labour not
found.

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expenses to be charged shall in case of dispute be fixed by the Minister or any officer appointed by him for the purpose.

False statements or entries by licensees.

100. A licensee shall not publish or cause to be published any false information or make any false premise concerning or relating to work or employment to anyone who registers for employment.

A licensee shall not make or cause to be made any false entries in the registers to be kept as in this Act provided.

Conviction to be endorsed on license.

Cancellation of license.

101. Every conviction against a licensee shall be endorsed on his license by the court before or by whom such conviction is had, and, upon failure to deliver up his license for such endorsement or upon a third conviction within three years from the first conviction, the license shall be cancelled, and the clerk of the court shall notify the Minister for that purpose.

For the purpose of carrying out the provisions of this section the judge, magistrate, or justice may order the defendant to produce and deliver up his license.

Where license cancelled holder not qualified to obtain license.

102. A person whose license has been cancelled shall not be entitled to hold a license until the expiration of one year from the date of such cancellation.

Production of license.

103. A licensee shall not be entitled to maintain an action for the recovery of fees unless at the trial he produces his license.

Loss or destruction of license.

104. On satisfactory proof of loss or destruction of a license, and on the payment of one shilling, the Minister may, at the request of the licensee, issue a duplicate license bearing all endorsements, and such duplicate shall avail for all purposes as if it were the original license.

DIVISION 3.—General provisions and penalties for the purposes of this Part.

Penalty for contravention of Act.

105. Any person who contravenes or fails to carry out any provision of this Part of this Act shall, where no other penalty or punishment is provided, be liable on conviction to a penalty not exceeding five pounds, or imprisonment not exceeding three months.

106.

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106. A copy of any entry in any of the registers prescribed, which copy purports to be signed by the Minister or any officer of the department making the same, shall be *prima facie* evidence of the truth of the matters stated in such copy.

107. The Governor may make regulations for the purposes of this Part of this Act—

- (a) prescribing the form of registers and generally the forms to be used;
- (b) prescribing the form of licenses which may be issued, and the form of renewals of such licenses;
- (c) regulating the exhibition of licenses and other documents required to be exhibited;
- (d) prescribing the scale of fees chargeable by and payable to licensees;
- (e) generally giving effect to the purposes of this Part of this Act;

and may by such regulations impose a penalty not exceeding twenty pounds for any breach thereof.

PART XI.

INSURANCE AGAINST UNEMPLOYMENT.

New Part,
Act No. 16,
1918, s. 21.

108. The Minister may, on the recommendation of the Board of Trade, and on conditions prescribed, for the purpose of creating funds for insurance against unemployment or loss of work due to adverse weather or sickness or the casual nature of the employment offering in any industry, authorise the payment out of the Consolidated Revenue Fund, which is hereby appropriated for that purpose, to any unemployment insurance committee formed in manner prescribed for a period of not less than one year, of bonuses or subsidies which shall

Insurance
against unem-
ployment.



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Industrial Arbitration.

not exceed five per centum of the total amount of wages paid to any employees represented by such committee in the said period:

Provided that no such payment shall be made unless the Board of Trade certifies that the fund is contributed to in proper proportions by the employers and employees engaged in the industry, and is administered by a suitable committee of representative employers and employees.

SCHEDULES.

Schedules
One and Two
repealed,
Act No. 81,
1916, s. 6.

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